No. 9011

United States
Circuit Court of Appeals
For the Ninth Circuit

L. KENNETH SCHOENFELD, HERBERT A. SCHOENFELD, JR., and RALPH A. SCHOENFELD, administrators, de bonis non, cum testamento annexo, of the Estate of HERBERT A. SCHOENFELD, Deceased.

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BRIEF OF PETITIONERS

Upon Petition to Review a Decision of the United States Board of Tax Appeals

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STATEMENT OF THE PLEADINGS

On January 17, 1936 the Commissioner of Internal Revenue mailed his final determination of the estate tax against the Estate of Herbert A. Schoenfeld, deceased, claiming a net deficiency tax (after allowing for 80% credit for state tax paid) of $5974.89.

On April 13, 1936 the administrators, de bonis non, filed with the United States Board of Tax Appeals their petition for review.

On July 14, 1936 the Commissioner answered with a general denial.

The case was heard at Seattle, Washington, on June 21st and 22nd, 1937.

On January 10, 1938 the Board of Tax Appeals rendered a decision sustaining the Commissioner. (37 B. T. A. ——).

On March 29, 1938 the administrators, de bonis non, filed with the United States Board of Tax Appeals their petition for review by the United States Circuit Court of Appeals for the Ninth Circuit.

After various orders extending the time for transmission and delivery of the record to October 26, 1938 the record was filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit on October 12th, 1938.

JURISDICTION OF THIS COURT

6 F. C. A., Title 26, Sec. 641 (a) (b) permits decisions of the United States Board of Tax Appeals to be reviewed by the United States Circuit Court of Appeals in the circuit in which is located the Collector's office to which was made the return of the tax in respect of which the liability arises.

6 F. C. A., Title 26, Sec. 421 (c) requires the return to be filed with the Collector of the district in which was the domicile of the decedent at the time of his death.

The decedent was a resident of the State of Washington (tr. 12), his estate was probated in King County, Washington (tr. 53) and the return was made to the Collector of Internal Revenue in the State of Washington (Tacoma).

STATEMENT OF THE CASE

Herbert A. Schoenfeld, who died on April 21st, 1933, was a resident of Seattle, Washington, and his estate was probated at King County, Washington (tr. 47).

On December 10, 1923 Berman Schoenfeld, together with Herbert A. Schoenfeld (the decedent) and Bessie B. Schoenfeld, wife of the decedent, pur-

chased 25.15 shares of stock of the Schoenfeld Holding Corporation (Ex. 1 tr. 34).

One-half of the stock purchased belonged to Berman Schoenfeld and the remaining one-half became the property of the decedent and his wife (tr. 40).

The consideration for the purchase was the agreement of the purchasers to pay to the seller an income for her life and after her death to pay monthly incomes for life to the brothers or sisters of the seller as the seller should direct by will, but not to exceed $500.00 per month (Ex. 1 tr. 34).

The seller of the stock died prior to June 26, 1931. Bessie B. Schoenfeld, wife of the decedent, died June 26, 1931 (tr. 40).

By her will Bessie B. Schoenfeld devised her community interest in the Schoenfeld Holding Corporation stock to her husband for life, with remainder over to her sons. She directed by her will that her community liability on account of the purchase of the stock be paid by her husband out of the earnings on her community half of the stock (tr. 43).

At the date of death of Herbert A. Schoenfeld there were four persons living who were entitled to benefits under the stock purchase contract, their ages were 48, 58, 59 and 70. (tr. 47).

In June, 1933 one of the four beneficiaries, on behalf of all four, filed a claim against the estate in the amount of $65,190.00 as representing the estate's one-half of the liability under the stock purchase contract of December 10, 1923. The claim was approved by the administrators and by the Judge of the probate court having jurisdiction of the estate (tr. 52-53).

In each of the estate tax returns of decedent and of decedent's wife there was returned as gross estate the value of one-fourth of the 25.15 shares of stock. In auditing these returns respondent in each case allowed as a deduction the amount he determined as representing one-fourth of the entire contract liability (tr. 40). In the present case the administrators claimed a deduction for decedent's contract liability in the amount of $65,190.00. The respondent allowed $24,-226.79 of the deduction claimed and disallowed the remainder (tr. 15).

Herbert A. Schoenfeld was the residuary legatee of his wife's estate (tr. 44) and in his estate there was identified as property previously taxed in the Estate of Bessie B. Schoenfeld $57,911.34 (tr. 17), a detail of which is found in the inventory of his estate on pages 55-58 of the transcript.

Subsequent to the death of Bessie B. Schoenfeld only

the $500.00 monthly payments were made to the annuitants (tr. 48-50). The corporation paid dividends as follows:

Date paid	Total paid	Paid to H. A. Schoenfeld or his estate
April 13, 1932	$64,932.00	$29,455.00
December 31, 1934	20,000.00	10,000.00
December 2, 1935	36,000.00	18,000.00

(tr. 48).

The reversion factor which represents the present value of $1.00 the possession and enjoyment of which is postponed until the end of the year of the date of death of the survivor of four persons aged 48, 58, 59 and 70 respectively is $.3655 (tr. 48).

In accordance with the American Experience Mortality Table the life expectancy of a person 48 years of age is 22.35 years (tr. 50).

STATEMENT OF QUESTIONS INVOLVED

I.

If there is a liability for the payment of a definite monthly sum for a definite number of years shall the amount payable be reduced for estate tax purposes to

a present worth value by resorting to interest, discount and reversion?

The Board of Tax Appeals sustained the reduction so made by the Commissioner and from this ruling the taxpayers appeal.

II.

Where a devisee accepts a devise of specific stock by a will which charges him with the payment of a specific obligation does his estate become liable for the amount of the obligation in the event he fails to pay the obligation?

The Board of Tax Appeals held that his estate was not liable and from this ruling the taxpayers appeal.

III.

Does the residuary legatee of an estate who takes possession of the residue without paying the obligations of the estate become personally liable for the obligations of the prior estate?

The Board of Tax Appeals held that he did not and from this ruling the taxpayers appeal.

ASSIGNMENTS OF ERROR

The assignments of error upon which Petitioners rely and which they will argue herein are Assign-

ments of Error Numbers 1, 2, 3, 4, 5 and 6 (tr. 32) and Assignment of Error Number 7 (tr. 33).

ARGUMENT

WHAT IS THE AMOUNT OF THE LIABILITY TO THE ANNUITANTS?

Assignment of Error 1. The holding that the amount of the indebtedness could be discounted because of the period of time over which payments were made.

Assignment of Error 2. The holding that a mathematical formula should be used to determine the amount of the claim.

Because the payments continued so long as any one of four persons survived, the expectancy must be determined by resorting to mortality tables.

Ithaca Trust Co. vs. U. S. 279 U. S. 151.

The claim as filed and approved used the age of the youngest person in the group and fixed the expectancy at 21.73 years (tr. 52). The Commissioner used a reversion factor of $.3655 which represents the present value of $1.00, the possession and enjoyment of which is postponed for the expectancy of the group (tr. 15). (See page 48 for stipulation re typographical error correcting factor in deficiency letter from $.6355 to $.3655.) By use of the tables on page 35, Regulations

80 a reversion factor of $.3655 would give the expectancy of the group of 25.66 years.

However, inasmuch as we are concerned with a principal, it is immaterial if the expectancy is 21.73 years or 25.66 years. If the expectancy of the youngest in the group is less than the expectancy of the group, then the taxpayer and not the Commissioner is penalized.

The question, therefore, resolved itself to this: The purchasers of the stock were obligated to pay the Falk annuitants $500.00 a month for 21.73 years and the total amount claimed by the Falks was $130,380.00 arrived at by simple arithmetic $500. x 12 x 21.73.

It is the position of the taxpayers that the 1932 Revenue Act (effective April 21, 1933) and the regulations then and now in effect, permit a deduction of the total amount which must be paid to the annuitants and that the Commissioner is wholly without right to wander into the realm of higher mathematics to reach a different result.

Section 303 (a) of the Revenue Act of 1926 as amended by Section 805 of the Revenue Act of 1932 (6 F. C. A. Title 26, Sec. 412) reads as follows:

> "For the purpose of the tax the value of the net estate shall be determined by deducting from

the value of the gross estate—

(a) * * * * *

(1) Such amounts—

(A) for funeral expenses,

(B) for administration expenses,

(C) for claims against the estate,

(D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, * * * * * * * * *

as are allowed by the laws of the jurisdiction * * * * * * under which the estate is being administered, * * * * * * . The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. * * * * * * * "

Article 36 of Regulations 80 (1934 edition) covering the estate tax provisions of the Revenue Acts of 1926 and 1932 reads as follows:

"Claims against the estate.—

"The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, *whether then matured or not*, and any interest thereon which had accrued at time of death. Only claims enforceable against the estate may be deducted. If the claim is founded upon a promise or agreement the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full

consideration in money or money's worth."

The claim here involved is for $500. a month for 21.73 years. It is no different than a mortgage or bond issue payable in monthly installments over ten, twenty or thirty year periods. Under a law which authorizes a taxpayer to deduct "amounts" for claims against the estate, what would be the deduction for a $120,000.00 mortgage payable at the rate of $500. per month for twenty years? It would be exactly $120,000.

What did the Commissioner do in this case? He set up a mathematical formula as follows: He referred the matter to the Veterans' Administration which determined that the reversion factor of $.3655, based on the expectancy of the four annuitants; then he supposed that the taxpayers set up a fund of $152,730, which he supposed could be invested at 4% ; this would result in an income of exactly $500.00 a month—sufficient to pay the monthly installments to the Falks. When the payments to the Falks ended he supposed the depositors of the fund would get back their $152,-730.00; but, reasoned the Commissioner, the depositors would not get back this money for 25.66 years, that the reversion factor, which represents the present value of $1.00, possession and enjoyment of which is postponed until the death of the four annuitants, is

$.3655 and that the present value of what the depositors would get back is $55,822.82. Having deposited $152,730.00, the present value of which when returned is only $55,822.82, the claim was reduced to the difference between the two figures or only $96,-907.18. (tr. 15).

If the expectancy is 25-2/3 years, the Commissioner necessarily admits that the amount which the annuitants will be paid is $154,000.00; by his mathematical formula, the amount is reduced to $96,907.18.

What the Commissioner did was to make a contract for the parties which they themselves had not made. They did not set up any such fund and they certainly cannot earn 4% on their money these days.

We feel that the Commissioner and the Board have confused the word "amount" with the word "value".

The Act above quoted provides that the net estate shall be determined "by deducting from the *value* of the gross estate * * * * * *amounts* * * * * * for claims against the estate."

The Revenue Acts do not define the word "value" and they do not give any, or what, factors shall be used in determining *value*. Regulations 80 (1934 Edition) page 27 resorts to fair market value and the ac-

cepted catch phrase of a willing buyer and a willing seller.

All dictionaries define "value" as "worth in money."

Justice Holmes in the case of *Ithaca Trust Co. vs. U. S.* 279 U. S. 151, says:

> "The value of property at a given time depends upon the relative intensity of the social desire for it at that time, expressed in the money that it would bring in the market."

"Amount" is the sum total or aggregate. *3 Corpus Juris, Secundum 1056.*

Time is a factor in determining the *value* of money. Time cannot possibly be a factor in determining the *amount* of money.

If money is worth 4% and its enjoyment is postponed for 25 years the *value* of $1.00 is only $.375; the *amount* is still $1.00 but its present *value* is only $.375. At the end of 25 years the *amount* returned is still $1.00 but, taking time as a factor, the *value* must be discounted by what it would earn during the time its enjoyment is postponed.

When the Act specifically provides that the *amount* of the claims shall be deducted from the *value* of the assets the Commissioner cannot establish the *value*

of the claims. All attempts of the Commissioner, by regulation or otherwise, to disallow claims which do not violate any of the conditions of Section 303-a-1 as amended have been stopped by the Courts.

> "The Commissioner was without authority to make a rule which refused the full effect of the deductible allowance in the way of claims which was provided for by said section." *Commissioner vs. Strauss*, (C. C. A. 7th) 77 Fed. 2d 401, at page 405.

The Commissioner, by regulation, attempted to limit the amount of the deductions under this section by the amount of assets in the estate available for the payment of claims. The First, Fifth, Seventh and Eighth Circuits stopped him.

Commissioner vs. Lyne, (C. C. A. 1st) 90 Fed. 2d 745.

Commissioner vs. Windrow, (C. C. A. 5th) 89 Fed. 2d 69.

Commissioner vs. Ames, (C. C. A. 7th) 88 Fed. 2d 338.

Helvering vs. Northwestern National Bank & Trust Co., (C. C. A. 8th) 89 Fed. 2d 553.

> "Every other deduction ought to have the full allowance that the statute provides. Courts and administrative agencies are bound to enforce the plain words of the statute although there may be

> reasons to think, in view of the general legislative purpose that some other provision would have met with favor if the Legislature had called it to mind. We cannot, if we would, amend the statute to read '*The value* of the claims against the estate' or 'Claims against the estate *so far as paid*'." (italics by the court) *Commissioner vs. Windrow* 89 Fed. 2nd 69 at page 71.

The Courts have refused the Commissioner the right to take into consideration the known factor of worthlessness in an effort to reduce the amount of the claim. It would seem that if the Commissioner is not permitted to reduce the amount of the claims when the facts show that such claims will never be paid, then in this case the Court should not permit him to reduce the amount of an unmatured claim by injecting such factors as interest, time or discount; particularly should this be so when the Commissioner's own regulations provide that personal obligations of the decedent, existing at the time of his death may be deducted "whether then matured or not."

The Board's opinion states that the burden is upon the taxpayers to show that the Commissioner erred in selecting a figure of life expectancy or using 4% interest. If we were challenging the accuracy of these factors we would agree with the opinion. We are not challenging the accuracy of them; what we do chal-

lenge is the Commissioner's right to use any factors whatsoever. Our position is that the Act gives the taxpayer the right to deduct the *full amount* of the claim and that the Commissioner has no right whatsoever to reduce the amount of the claim by the use of reversions or interest or time. If the Commissioner is permitted to rewrite the contract or resort to higher mathematics to increase the tax, then we will admit that he has used a method which is as good as any other method. But we respectfully submit that the law gives him no authority whatsoever to vary the *amount of the claim* by the method used or by any other method.

WHAT PORTION OF THE ANNUITIES MAY THIS ESTATE DEDUCT?

Assignment of Error 3. The holding that there was not adequate consideration for the indebtedness claimed as a deduction.

Assignment of Error 4. The failure to allow the estate to deduct the full amount it will be compelled to pay by reason of the contract.

Assignment of Error 5. The holding that the estate could deduct only one-half of the liability of the husband and wife instead of the full amount of the liability of the husband and wife.

Herbert A. Schoenfeld and Bessie B. Schoenfeld, husband and wife, signed the contract and became

jointly and severally liable for the entire obligation.

Lumbermen's National Bank vs. Gross, 37 Wash. 18; 79 Pac. 470

In re Hart's Estate, 150 Wash. 482-492; 273 Pac. 735

No contention is made that Berman Schoenfeld, the purchaser of the other half of the stock is insolvent and no further reference to his interest in the contract will be made.

The Board found that one-fourth of the stock purchased became the property of Herbert A. Schoenfeld and one-fourth became the property of his wife, Bessie B. Schoenfeld (tr. 21). This, in effect is the same as saying that the community consisting of Herbert A. and Bessie B. Schoenfeld purchased one-half of the stock and it follows that the community of Herbert A. and Bessie B. Schoenfeld became liable for the payment of one-half of the annuities.

One-fourth of the stock was returned in the wife's estate and one-fourth of the claim was allowed as a deduction from her estate.

Subsequent to his wife's death, Herbert A. Schoenfeld received dividends on the stock which had been community property and after his death other di-

vidends were paid to his estate (tr. 48).

The residue of his wife's estate received by Herbert A. Schoenfeld was $57,911.34 and this sum the Commissioner allowed as a deduction for property identified as previously taxed (tr. 17).

After the death of the wife, the Falks were paid the maturing installments of $500.00 each month (tr. 48 and 50) and on the date of the husband's death the Falks claimed that there was due them from all the purchasers the sum of $130,380.00. From the decedent's estate they claimed one-half of this amount or $65,190.00 and the claim as presented was approved by the executors and by the Judge of the probate court (tr. 52-53). It is the position of the petitioners that the full liability of both the husband and the wife is a proper deduction in the present estate. The Commissioner and the Board limited the deduction to the husband's one-half of the community liability.

The Board's reasoning is as follows:

1. That Section 805-1-D of the Revenue Act of 1932 "requires an equality of treatment of the value of the property returned and the amount of the indebtedness against it."

2. That there was not adequate consideration for

the payment of more than one-fourth of the liability because the decedent purchased only one-fourth of the stock.

3. That upon the dissolution of the community by death the estate of the first decedent is entitled to deduct only one-half of the community debts.

4. That the liability of the purchasers was joint and several and that "if the decedent's estate were required to pay more than the decedent's proportionate share there would arise a right of contribution against the other purchasers."

We will answer the Board's position seriatim.

1. *Equality of Treatment.* We cannot quite follow the Board in this reasoning. The value of the husband's half of the community stock was in excess of the total community liability. We understand the rule to be that where there are liens against the property but no personal liability against the decedent then there must be equality of value and the amount of the deduction—that a lien may not exceed the value of an item. Such a rule properly limits the deduction for taxes to the fair market value of the property on which the tax is merely a lien but would have no application where there is a debt or personal liability against the decedent's estate.

2. *Adequacy of consideration.* There was included in the husband's estate his one-half interest in the 12.575 shares of stock purchased, appraised at $91,-168.75 (tr. 47).

The total amount claimed as a deduction is only $65,190.00.

We think that these figures completely answer the question as to adequacy of consideration. In addition to this, and during his lifetime, the husband received very substantial dividends on these shares of stock (tr. 48).

3. *Community debts.* The Board is quite right in its decision that under the Washington law only one-half of the community debts may be deducted from the decedent's half of the property. Section 1342 Remington's Revised Statutes of Washington so provides. We are not contending otherwise. Our contention is that by reason of the husband's failure to pay the wife's half of the community debt out of her half of the community estate (which he received as residuary legatee) made him, and on his death makes his estate, liable for the unpaid portion of the wife's half of the community debt, and that this liability is in addition to the liability which the Commissioner admits is his.

4. *Contribution.* The Board's last reason is that if the husband's estate is called upon to pay more than his original share of the indebtedness it has "a right of contribution against the other purchasers." This we also admit is correct but may we ask who was the other purchaser? The other purchaser was his wife! It must be remembered that she had willed him a life estate in this stock, plus the residue of her estate. Paragraph four of her will charged him with the payment of her community liability because of purchase of stock of the Standard Furniture Company (tr. 43) and although he received substantial dividends on this stock, plus the residue of her estate, he did not pay her share of this claim.

Therefore, if the Board had carried its reasoning to a conclusion in accordance with the facts it would have been forced to hold that the estate's right of contribution for payment of his wife's share of this claim was against his wife's estate and that, as residuary legatee of her estate, he has a right of contribution from himself. If the right of contribution for the wife's share of this claim was against himself then it was his debt and was a proper deduction from his estate.

That was the taxpayers' position before the Board

and it is their position before this court.

We reached this conclusion irrespective of the express provisions of his wife's will. We would come to the same result if her will had been silent as to the payment of this or any other debt.

Paragraph three of his wife's will (tr. 43) specifically bequeathed her community interest in this stock to her sons after the husband's life estate. It would have made no difference if she had willed it to her sons outright. The residue of her estate was liable for the payment of her debts because it is the law that property constituting the residuum shall be exhausted for the payment of debts before recourse can be had to property specifically devised.

69 Corpus Juris, 1277 and cases cited.

The residue of her estate was more than enough to have paid in full her half of the community liability of the Falk annuities. In addition to the residue the husband received substantial dividends on this stock. Both the residue and the dividends the husband appropriated to himself and on his death $57,911.34 of the residue of the wife's estate was in his possession and returned as his property.

Approximately one year and ten months elapsed

between the death of the wife and the death of the husband. In this period her estate's half of the community liability was $2750.00 and the total community liability on the date of her death was $70,690. and her community half of this obligation was $35,345. Her community half of the Falk annuities was allowed as an offset against her estate (tr. 40). The residue of her estate appropriated by the husband and identified in his estate as property previously taxed amounted to $57,911.34, more than enough to have paid her community half of the obligation to the Falk heirs, to say nothing of the dividends received by the husband during his lifetime.

By paying only the maturing installments, the husband paid $2750. on the total liability of $35,345. Had he paid his wife's estate's liability in full there would have been $32,595. less in his estate. Instead of paying it he took and kept the residue of her estate and thereby became personally liable for her debt.

An executor who converts assets of the estate to his own use becomes personally liable to the creditors of the estate and they may sue therefor.

Denton vs. Schneider, 80 Wash. 506-518; 142 Pac. 9

In the present case the Falks were the creditors.

They could have sued the husband for the wife's debt and if he were personally liable therefor his estate is likewise liable.

Paragraph three of his wife's will gave him her community interest in stock. Paragraph four of her will is as follows:

> "I direct that any community liability to which my estate is subject because of the purchase of stock of the Standard Furniture Co., be paid by my husband out of the earnings on my community half of the stock of the Standard Furniture Company and/or the Schoenfeld Holding Corporation, hereinabove bequeathed to him for his life." (Ex. 2 tr. 43).

The husband accepted the bequest and having accepted the bequest he is charged with payment of her community liability because of the purchase of stock. That community liability was her share of the annuities to the Falks. It matters not whether the dividends received by him from this stock were more or less than the amount he was called upon to pay. If his only liability for the payment of her share of the annuities rested upon paragraph four of her will it would be enough. The bequest to him was *cum onere.* He accepted the bequest with a charge upon it and not having paid the obligation, he became personally liable therefor.

> "If the devisee, in such case, accepts the devise, he becomes personally bound to pay the legacy, and he becomes thus bound even if the land devised to him proves to be less in value than the amount of the legacy. If he desires to escape responsibility, he must refuse to accept the devise."

Hall vs. Curd, 181 N. E. 168, 94 Ind. App. 181
See also:

Wharton vs. Snell, 147 Southern 602, 226 Ala. 525

Sneeden's Estate 276 N. Y. S. 441.

Certainly if, as the above cases hold, the devisee is personally liable for the charge imposed upon the bequest and he may be sued for the amount in a civil action, it naturally follows that his liability on his death is a claim against his estate.

There is no question in this case of unadministered assets in the wife's estate. The identification of the residue of her estate included in the inventory as part of the assets of the husband's estate shows that it was distributed.

There was nothing wrongful in the administration of the wife's estate. It was what is ordinarily done. Suppose, for illustration, the death of a wife, residing in Washington, whose entire estate consists of a home purchased by the community and on which there is a

$10,000. purchase money mortgage payable at the rate of $50. a month. Her will devised this home to her husband for life and on his death to her children. The husband survived for 22 months during which time he made only the regular payments of $50. a month and, upon his death, the mortgagee filed a claim against his estate for $8900.00. Could it possibly be said that only one-half of the $8900.00 mortgage was a proper claim against his estate because there was not adequate consideration in money or moneys worth; or that his estate was liable for only one-half of the debt because it owned only one-half of the property; or that if he paid his wife's share of the mortgage he had a right of contribution from his wife's estate. Had his executors paid this mortgage in full, would a probate court hold that the executor had wrongfully made the payment? Suppose an additional fact of $20,000. cash in the wife's estate which she willed to him in a residuary clause and which the husband appropriated to his own use. Does that make the liability of his estate any less?

Stripped of all the disconcerting embellishments, that is the precise question involved in this case.

> Assignment of Error 6. The failure to allow the sum of $65,190.00 as a deduction from the decedent's gross estate.

Assignment of Error 7. The holding that the decedent's estate could deduct from the gross estate only the sum of $24,226.79.

Assignments of Error Number 6 and 7 relate to the computation of the amount of the claim based upon petitioner's theory of the case.

If this Court holds that the full amount to be paid the annuitants is a proper deduction the estate of the husband would be entitled to deduct one-half of the claim as allowed or $32,595.00 rather than $24,226.79.

If this Court should hold that the estate of the husband is liable for the wife's unpaid portion of the claim then it would be entitled to deduct double the figure determined in the preceding paragraph.

RECAPITULATION

The petitioners respectfully urge that this Honorable Court reverse the ruling of the United States Board of Tax Appeals as follows:

A. *As to Amount.*

That the estate be permitted to deduct the full amount to be paid the annuitants undiminished by such factors as time, interest or reversion for the reason that the Commissioner has no legal right to vary a deduction authorized by statute.

B. *As to Portion.*

That the estate be permitted to deduct the entire community liability for the reason that it was legally liable therefor because

1. The decedent, as executor of his wife's estate, had not paid her portion of the claim.

2. The decedent, as residuary legatee of his wife's estate, had appropriated the residue without payment of her portion of the claim.

3. The decedent, having accepted a specific bequest charged with the payment of this debt, made the debt his own.

4. If there is any right of contribution against his wife's estate, it is against himself.

Respectfully submitted,

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